



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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JOHN ELIAS BALDACCI
GOVERNOR

BETH NAGUSKY
ACTING COMMISSIONER

MEMORANDUM

TO: Board of Environmental Protection

FROM: Bill Hinkel, Division of Water Quality Management
Bureau of Land and Water Quality, Maine Department of Environmental Protection

DATE: October 21, 2010

RE: **Herman Turndorf Appeal of Department Order Approving the Discharge of Treated Sanitary Wastewater from Albert Sirois' Overboard Discharge (OBD)**

Statutory and Regulatory References: Pursuant to *Waste discharge licenses*, 38 M.R.S.A. § 413, a license is required from the Department before any person may directly or indirectly discharge or cause to be discharged any pollutant to waters of the State. Application processing requirements are contained in *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2 (effective April 1, 2003), and *Application Processing Procedures for Waste Discharge Licenses*, 06-096 CMR 522 (effective January 12, 2001). *Overboard discharges: licenses and abandonment*, 06-096 CMR 596 (last amended November 27, 2004) contain additional requirements, guidelines and procedures for issuing waste discharge licenses for overboard discharges (OBDs).

Project Location: The licensed OBD is located at 33 Tecumseh Trail in East Boothbay, Maine. The property abuts the Little River, a Class SB waterbody.

Description: On January 13, 2010, the Department of Environmental Protection (Department) accepted as complete for processing an application from Albert Sirois for renewal of Waste Discharge License #W003648-5A-D-R, which was issued to the applicant on March 30, 1994, with a Corrected Order issued on May 11, 1994.

On February 3, 2010, the Department issued Waste Discharge License #W003648-5A-D-R to the applicant, Albert Sirois, for the year-round discharge of up to 300 gallons per day of secondary treated sanitary wastewater from a residential single-family dwelling to the Little River, Class SB, in Boothbay, Maine.

By letter dated March 4, 2010, Dr. Herman Turndorf filed a timely appeal of the February 3, 2010 Waste Discharge License. The bases for the appeal are: 1) the licensee, Albert Sirois, no longer owns (*i.e.* possesses title, right or interest) the property containing the OBD; 2) the Department issued a final decision on Mr. Sirois' application before expiration of the 30-day period for public comment during which a hearing may be requested pursuant to 06-096 CMR 522(8)(b)(1); 3) the structure on the subject property is not a year-round residence and the license should not authorize the discharge on a year-round basis; and 4) the licensee has not satisfactorily demonstrated, based on

documentation from a licensed site evaluator experienced in designing replacement systems for overboard discharges, that there are no technologically-proven alternative methods of wastewater disposal consistent with the plumbing code adopted by the Department of Health and Human Services pursuant to Title 22, section 42 that could result in elimination of the overboard discharge, if installed.

Proposed Supplemental Evidence: In response to the appeal, the licensee proposed two exhibits as supplemental evidence. The exhibits were:

- Exhibit 1: State of Maine 2010 Annual Report to the Secretary of State for Sirois Associates,
- Exhibit 2: DEP Suitability Report dated May 27, 2010.

While referred to in the licensee's response to the appeal, the documents did not meet the standard for supplemental evidence and were not admitted into the record by the Board Chair.

Environmental Issues: The environmental issues related to this appeal are water quality related. The presence of overboard discharges restricts or prohibits allowable uses within Department of Marine Resources (DMR) Growing Areas (designated shellfish growing and harvesting areas). The removal of this OBD in conjunction with the removal of all others in the Little River could potentially reduce the restrictions and prohibitions on shellfish harvesting in this area. Department records indicate there are eighteen (18) licensed OBDs that discharge to the Little River, of which ten (10) do not have an alternative to eliminate the OBD. The license, as conditioned, is protective of Class SB water quality standards prescribed by *Standards for classification of estuarine and marine waters*, 38 M.R.S.A. § 465-B(2). The basis for the remaining points of the appeal is technical and procedural in nature.

Department Recommendation: After consideration of the appellant's arguments, review of the evidence in the record, and consultation with the Office of the Attorney General, the Department recommends that the Board vacate Department Order #W003648-5A-D-R due to the lack of title, right or interest by the applicant in the subject property.

LIST OF EXHIBITS

<u>PAGE</u>	<u>EXHIBIT DESCRIPTION</u>
005	Proposed Board Order
011	Project Location Map
013	Order Under Appeal
025	Albert Sirois' Application for Waste Discharge License
031	Appeal Filed by Herman Turndorf
101	Licensee's Response to Appeal

ESTIMATED TIME OF PRESENTATION: 1.5 hours